

**Notice of Allowability**

Application No.

10/607,803

Examiner

Keith Hendricks

Applicant(s)

MARTINEZ FORCE ET AL.

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendments of 6-26-03.
2. ☒ The allowed claim(s) is/are \_\_\_\_\_.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 6-26-03
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

- Please amend the section "Cross Reference to Related Applications" at page 1 to read as follows:

---- This application is a division of Application No. 10/021,985, filed December 13, 2001 (now U.S. Patent No. 6,770,803), which is a division of Application No. 09/326,501, filed June 4, 1999 (now U.S. Patent No. 6,388,113). ---

The following is an examiner's statement of reasons for allowance:

The claims are directed to sunflower meal comprising oil having an oleic acid content of more than 40 wt % and a stearic acid content of more than 12 wt %, each based on the total fatty acid content of the oil. Each of the claimed oleic acid and stearic acid amounts are beyond the 'normal' wild-type amounts found in nature for sunflower oil, as shown in Table 1 of the specification. This is a result of the specific transgenic sunflower plant disclosed in the specification, where the seeds, and thus the sunflower meal made from the seeds, contains oil having increased oleic acid and stearic acid contents over the normal sunflower oil amounts. These were not taught or suggested in the prior art of record.

Examiner's Comment regarding the amendment to the specification at Table 1:

The amendments to the palmitic C16:0 percent weight from 2-4% to 2-5% (high oleic), and the oleic C18:1 percent weight from 17-20% to 17-30%, is supported elsewhere in the specification, including at Table 2. As the higher amounts were stated and supported elsewhere in the specification, it was apparent that the upper-limit amounts of these two ranges as stated in Table 1, did not completely reflect the actual known upper limits. Thus, there is support for these changes and the amounts encompassed by the newly-recited ranges of Table 1. This was also done in the parent applications 09/326,501 and 10/021,985, and was explained on the record in the '501 application. In other pending

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related cases, applicant is strongly encouraged to clearly and specifically point out support for the introduction of such amendments to *each* new application, and not simply make the amendments without an explanation or showing of support on the record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**KEITH HENDRICKS**  
**PRIMARY EXAMINER**